3

IN THE HIGH COURT OF JUDICATURE AT BILASPUR
CHHATTISGARH

S.A. No. 259 **/2003**

APPELLANT
PLAINTIFF : Manaro Bai, aged about 50 years. W/o. Magan Ram Gond, Occupation Agriculturist R/o. Bhediya Tahsil Bhanupratappur, Distt. Kanker

VERSUS

RESPONDENTS
DEFENDANTS

1a. Dhirpal, aged about 55 years S/o Ranjan Gond

1b. Lakhani Bai ,aged about 40 years W/o. Darzen Gond,

1c. Lakhmu, aged about 32 years S/o. Dhirpal

1d. Kala Bai, aged about 28 years W/o. Dasrath

1e. Kalaram , aged about 25 years S/o. Dhirpal

All R/o. Village Dongarkatta, Tahsil Bhanupratappur, District Kanker

2. State of Chhattisgarh Through The Collector District Kanker (C.G.)

P. R. No. 419/03
Presented by Shri Pankaj Kotecha
dated 24.02.03

RECEIVED COPY
24/2
CLERK TO A.G. BILASPUR

APPEAL UNDER SECTION 100 OF CIVIL PROCEDURE CODE

AGAINST THE JUDGMENT AND DECREE PASSED BY SHRI MAHENDRA RATHORE, FIRST ADDITIONAL DISTRICT JUDGE, KANKER ON 24-01-2003 IN CIVIL APPEAL NO. 4-A/2000 ARISING OUT OF THE JUDGMENT AND DECREE PASSED BY, CIVIL JUDGE CLASS-II, BHANUPRATAPPUR, ON 30.11.99 IN CIVIL SUIT NO. 30-A/94.

Kotecha

3

of 58

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

APPELLANTS

1 (a) Radheram aged about 44 years
S/o Magan ram

1 (b) Sevaram aged about 38 years
S/o Maganram

1 (c) Smt Devasa Bai Widow of Rajaram

1 (d) Babulal aged about 23 years
S/o Rajaram

1 (e) Sarjuram aged about 20 years
S/o Rajaram

1 (f) Banshilal aged about 18 years
S/o Rajaram

All Resident of Village Bhediya Tahsil
Bhanupratappur Distt. Kanker

1 (g) Smt. Rajobai aged about 40 years
D/o Maganram W/o Sonaram R/o Village
Bongarkatta, Distt. Kanker

1 (h) Smt. Shayambati aged about 35 years
D/o Maganram W/o Sarjuram R/o Village
Bhanbeda Distt. Kanker.

Attested
AR(J). 7/11/05

Amended as per Court's order dtd. 28/10/05.
7/11/05

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक S.A.No.252/2003 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	03.01.2007 : Shri Prakash Tiwari, counsel for the appellants. Shri Vishnu Koshta, counsel for respondents 1-b to 1-e. Shri G.D. Waswani, Dy. G.A. for the State/respondent No.2. Heard on I.A. NO.3218 of 2006, for condonation of delay in filing the application under Order 22 Rule 2 of CPC. Not opposed. The application is allowed and the delay in filing the application is condoned. Heard on I.A. No.240 of 2006, for deleting the name of respondent No. 1-a Dhirpal who expired on 27.03.2005. Since the legal representatives of deceased Dhripal are already on record, it is prayed that the name of respondent No.1-a Dhripal be deleted from the cause-title. Not opposed. The application is allowed. Name of respondent No.1-a Dhripal be deleted from the cause-title. Heard on I.A. No.3217 of 2006, for taking documents on record. Not opposed. The application is allowed and the documents are taken on record.	

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ....S.A.No. 252/2003 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Heard on admission.

The appellant-plaintiff instituted Civil Suit No.30-A/1994 before the Civil Judge, Class-II, Bhanupratappur for declaration of title and possession on the ground that her father Tibhu had executed a will in her favour vide Ex.P/1. It is not disputed that on the date of suit the defendant was in possession of the suit lands. Learned Civil Judge, Class-II after considering the assertions made by the plaintiff in her testimony that Tibhu had put her in possession of the suit lands on execution of the document and the manner in which Ex.P/1 was couched, recorded a finding that the document was in fact a gift-deed executed by Tibhu and could not be construed as a will. Since the document was not registered, the suit for declaration of title was dismissed on that count. Aggrieved by the judgment and decree passed in Civil Suit No.30-A/1994, the plaintiff preferred Civil Appeal No.4-A/2000 before the First Additional District Judge, Kanker. The First Appellate Court also affirmed the finding recorded by the learned Civil Judge, Class-II that document Ex.P/1 was not a will and was an unregistered gift-deed. On this premise, the first appeal was also dismissed.

P.T.O.

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... S.A.No.252/2003 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Shri Prakash Tiwari, learned counsel appearing for the appellants placed reliance on **Ramabai Padmakar Patil (dead) by LRs and others, V. Rukminibai Vishnu Venkhande and others** reported in **AIR 2003 SC 3109** and **Smt. Pramod Kumari Bhatia V. Om Prakash Bhatia and others** reported in **AIR 1980 SC 446** , in support of his contention that the intention of Tibhu in executing the document Ex.P/1 ought to have been borne in mind and since it was intended that the plaintiff could get the land mutated in her name on the death of Tibhu , the document ought to have been construed as a will and in this manner the finding recorded by both the Courts below is erroneous and raises a substantial question of law in this appeal as to whether both the Courts below have erred in recording a finding that the document Ex.P/1 is an unregistered gift-deed and not a will.

I have heard learned counsel for the parties and perused the document Ex.P/1 as also the testimony of plaintiff-Manaro Bai and the evidence led by the parties. Manaro Bai admitted in her cross-examination that at the time of execution of the document Tibhu had delivered possession of the suit lands to her. It is also pertinent to note that in the Namantaran Panji Ex.D-II the name of Manaro Bai was mutated over the

63

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... S.A. No. 252/2003 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

suit lands as an heir of Tibhu and not on the basis of the document Ex.P/1. Manaro Bai has also admitted in her cross-examination that in revenue proceedings the said document Ex.P/1 was found to be a forged document. In my considered opinion, the mere fact that vide Ex.P/1 Tibhu had expressed his intention that after his death Manaro Bai could get her name mutated over the suit land would by itself, not be sufficient to construe the document as a will. Manaro Bai admitted in her examination-in-chief that her name was mutated over the suit lands by Tibhu during his life time. This completely nullifies the intention of Tibhu to bequeath the suit lands to Manaro Bai after his death. The possession of the suit lands was delivered by Tibhu to Manaro Bai at the time of execution of the document while expressing a clear intention of executing a gift in favour of Manaro Bai. The document was therefore, rightly construed as an unregistered document of gift and not a will. The document Ex.P/1 is an undated document. Learned counsel for the appellants has also not been able to furnish the date of death of Tibhu so as to disclose whether the appellant had filed this suit soon thereafter for declaration of title over the suit property. Manaro Bai admitted that after losing in revenue proceedings from the Court of Tahsildar up to the Court of Commissioner she had filed the suit on the basis of document Ex.P/1. She also admitted

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... S.A.No.252/2003 ..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

that she had not disclosed the document Ex.P/1 in revenue proceedings and had applied for mutation as the only daughter of Tibhu which also amounts to suppression of a material fact that her sister – defendant Durpad Bai was alive.

In this view of the matter, the finding recorded by both the Courts below that the document Ex.P/1 is not a will and is an unregistered deed of gift of immovable property not conferring any title to Manaro Bai is impeccable and cannot be faulted with. In my considered opinion, no substantial question of law is therefore involved in this second appeal. It is accordingly dismissed at the stage of admission. There shall be no order as to costs.

Sd/-
Dilip Raosaheb Deshmukh
Judge

P.T.O.